

document or documents, solely in order to avoid payment of fees. When HUD reasonably believes that a requester or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, HUD may aggregate any such requests and charge accordingly.

(c) *Waiving or reducing fees.* HUD will furnish documents without charge or at reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. The official authorized to grant access to records may waive or reduce the applicable fee where requested. The determination not to waive or reduce the fee will be subject to administrative review as provided in §2002.25 after the decision on the request for access has been made. Six factors shall be used in determining whether the requirements for a fee waiver or reduction are met. These factors are as follows:

(1) *The subject of the request:* Whether the subject of the requested records concerns “the operations or activities of the government”;

(2) *The informative value of the information to be disclosed:* Whether the disclosure is “likely to contribute” to an understanding of government operations or activities;

(3) *The contribution to an understanding of the subject by the general public likely to result from disclosure:* Whether disclosure of the requested information will contribute to “public understanding”;

(4) *The significance of the contribution to public understanding:* Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities;

(5) *The existence and magnitude of a commercial interest:* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(6) *The primary interest in disclosure:* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in dis-

closure, that disclosure is “primarily in the commercial interest of the requester.”

[53 FR 37551, Sept. 27, 1988]

§2002.13 Charges for interest and for unsuccessful searches; utilization of Debt Collection Act.

(a) *Charging interest.* HUD will begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. A fee received by HUD, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C. and will accrue from the date of the billing.

(b) *Charge for unsuccessful search.* Ordinarily no charge for search time will be assessed when the records requested are not found or when the records located are withheld as exempt. However, if the requester has been notified of the estimated cost of the search time and has been advised specifically that the requested records may not exist or may be withheld as exempt, fees shall be charged.

(c) *Use of Debt Collection Act of 1982.* When a requester has failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), HUD may, under the authority of the Debt Collection Act and part 17, subpart C of this title, use consumer reporting agencies and collection agencies, where appropriate, to recover the indebtedness owed the Department.

[53 FR 37552, Sept. 27, 1988]

§2002.15 Advance payments.

(a) HUD may not require a requester to make an advance payment, *i.e.*, payment before work is commenced or continued on a request, unless:

(1) HUD estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250. Then, HUD will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) Where a requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), HUD may require the requester to pay the full amount owed plus any applicable interest as provided by § 2002.13(a) or demonstrate that he has, in fact, paid the fees, and to make an advance payment of the full amount of the estimated fee before HUD begins to process a new request or a pending request from that requester.

(b) When HUD acts under paragraph (a)(1) or (a)(2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (*i.e.*, 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after HUD has received fee payments described above.

(c) Where it is anticipated that either the duplication fee individually, the search fee individually, or a combination of the two exceeds \$25.00 over and above the free search time and duplication costs, where applicable, and the requesting party has not indicated in advance a willingness to pay so high a fee, the requesting party shall be promptly informed of the amount of the anticipated fee or such portion thereof as can readily be estimated. The notification shall offer the requesting party the opportunity to confer with agency representatives for the purpose of reformulating the request so as to meet that party's needs at a reduced cost.

[53 FR 37552, Sept. 27, 1988]

§ 2002.17 Time limitations.

(a) Upon receipt of a request for records, the appropriate Assistant Inspector General or an appointed designee will determine within ten working days whether to grant the request. The Assistant Inspector General or designee will notify the requestor immediately in writing of the determination and the right of the person to request a review by the Inspector General of an adverse determination.

(b) The time of receipt for processing a request for records purposes is the time it is received by the appropriate

office for review. If a request is misdirected by the requester, the Office of Inspector General or Department official who receives the request will promptly refer it to the appropriate office and will advise the requester about the delayed time of receipt.

(c) A determination with respect to a request for review by the Inspector General of HUD under § 2002.25 will be made within 20 working days after receipt and will be communicated immediately to the person requesting review.

(d) If the Office of Inspector General grants the request for records, the records will be made available promptly to the requester.

(e) In unusual circumstances as specified in this paragraph, and subject to the concurrence of any Assistant Inspector General or appointed designee, the time limits prescribed in either paragraph (a) or (c) of this section may be extended. Any extension will be in writing to the requester and will include reasons for the extension and the date on which the disposition of the request will be sent. No extension will be for more than ten working days. As used in this paragraph, *unusual circumstances* means (but only to the extent necessary to the proper processing of the particular request) that there is a need:

(1) To search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; or

(2) To search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) For consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more offices of the Office of Inspector General having a substantial interest in the subject matter of the request.

[49 FR 11165, Mar. 26, 1984. Redesignated and amended at 53 FR 37550, 37552, Sept. 27, 1988; 57 FR 2227; Jan. 21, 1992; 59 FR 14097, Mar. 25, 1994]